

agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

(i) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to post secondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(3) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Recipient* means any State or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or indirectly through another recipi-

ent, or including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(k) *Secretary* means the Secretary of Commerce, U.S. Department of Commerce.

(l) *Section 504* means section 504 of the Act.

(m) *Small recipient* means a recipient who serves fewer than 15 beneficiaries and who employs fewer than 15 employees at all times during a grant year.

[47 FR 17746, Apr. 23, 1982, as amended at 68 FR 51353, Aug. 26, 2003]

#### §8b.4 Discrimination prohibited.

(a) *General.* No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

(b) *Discriminatory actions prohibited.*

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped individual with any aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals, unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

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(vi) Deny a qualified handicapped individual the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefits, or services.

(2) For purposes of this part, aid, benefits, and services must afford handicapped individuals an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as afforded to others, in the most integrated setting appropriate to the individual's needs. However, aid, benefits and services, to be equally effective, need not produce the identical result or level of achievement for handicapped and non-handicapped individuals.

(3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular aid, benefits, or services, despite the existence of separate or different aid, benefits, or services which are established in accordance with this part.

(4) A recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped individuals; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the geographic site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) That have the effect of excluding handicapped individuals from, denying them the benefit of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped individuals.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, rented or otherwise acquired, in whole or in part, with Federal financial assistance.

(7)(i) In providing services, recipients to which this subpart applies, except small recipients, shall ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available. The Secretary may require small recipients to provide auxiliary aids in order to ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by small recipients, when this would not significantly impair the ability of the small recipient to provide benefits or services.

(ii) Auxiliary aids may include brailled and taped materials, interpreters, telecommunications devices, or other equally effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons with manual impairments, and other similar devices and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of non-handicapped persons from aid, benefits, or services limited by Federal statute

or Executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped individuals is not prohibited by this part.

(d) *Integrated setting.* Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped individuals.

(e) *Communications with individuals with impaired vision and hearing.* Recipients shall ensure that communications with their applicants, employees and beneficiaries are available to persons with impaired vision or hearing. Appropriate modes of communication may include braille, enlarged type, sign language and telecommunications devices.

[47 FR 17746, Apr. 23, 1982, as amended at 68 FR 51353, Aug. 26, 2003]

#### § 8b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) In case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended or the federally-funded program or activity is operated, whichever is longer.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer or property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transferee of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposed to mortgage or otherwise encumber the real property as security to finance construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. Such an agreement by the Secretary may be entered into only upon the request of the transferee (recipient) if it is necessary to accomplish such financing and upon such terms and conditions as the Secretary deems appropriate.

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency to carry out the objectives of Federal financial assistance under a law administered by the Department, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs or activities operated with such funds.